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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,995	10/24/2003	J. Wayne Halfacre	NEST-75A	1745
1473	7590	07/10/2006	EXAMINER	
FISH & NEAVE IP GROUP ROPES & GRAY LLP 1251 AVENUE OF THE AMERICAS FL C3 NEW YORK, NY 10020-1105			NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	
DATE MAILED: 07/10/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/692,995

Applicant(s)

HALFACRE ET AL.

Examiner

Frederick C. Nicolas

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-142 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☒ Claim(s) 18-20, 22, 43-45 and 47 is/are objected to.
- 8) ☒ Claim(s) 1-142 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/24/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Continuation of Disposition of Claims: Claims withdrawn from consideration are 6,7,12-16,31,32,37-41,52,53,66,67,88,95,103,111 and 118-142.

Continuation of Disposition of Claims: Claims rejected are 1-5,8-11,17,21,23-30,33-36,42,46,48-51,54-65,68-87,89-94,96-102,104-110 and 113-117.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of group I, Species C (Figs. 9-37), claims 1-5,8-11,17-30,33-36,42-51,54-65,68-87,89-94,96-102,104-110 and 113-117 in the reply filed on 6/16/2006 is acknowledged.
2. Claims 6-7,12-16,31-32,37-41,52-53,66-67,88,95,103,111,118-142 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/16/2006.

### ***Claim Objections***

3. Claim 1 is objected to because of the following informalities: it appears that the claimed limitation "a valve assembly" as recited in line 6, should be --the valve assembly-- to prevent double inclusion in the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5,8-11,17,21,23-30,33-36,42,46,48-51,54-65,68-87,89-94,96-102,104-110,113-117 are rejected under 35 U.S.C. 102(b) as being anticipated by Campbell 4,946,079.

Art Unit: 3754

Campbell discloses a rigid container (20), which comprises an orifice in a side-wall of the container as seen in Figure 1, a valve attachment (42) to which a valve assembly is attached in communication with the orifice (col. 3, ll. 35-68), a valve housing (36) having an air-back aperture (14) and a liquid-out aperture (16), a housing attachment (48), a valve core (40) having a liquid-out aperture (16b) and air-back passageway (14b), an actuator (18), the core body is movable to positions of differing degrees registration of the liquid-out aperture and the passageway between aperture and the spout by movement of the actuator (col. 3, ll. 35-68).

***Allowable Subject Matter***

6. Claims 18-20,22,43-45,47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kao 6,793,104, Steiger 6,446,845, Connan 5,303,850, Buford 3,595,445, Beall, Jr. 2,841,313, Maggenti 1,998,586, Maggenti 1,992,319, Rutter et al. 5,111,970, Flaherty 5,400,840, Hata 4,997,108 and Strand 4,877,159 disclose other types of container.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
July 4, 2006

 7/4/06  
Frederick C. Nicolas  
Primary Examiner  
Art Unit 3754